

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 358

LAUREANO MAYSONET GUZMAN, PETITIONER,

vs.

RAMON RUIZ PICHIRILO

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

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**IN UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

No. 5650

RAMON RUIZ PICHIRILO, Respondent, Appellant,

v.

LAUREANO MAYSONET GUZMAN, Libellant, Appellee.

Appendix to Appellant's Brief

[fol. 1]

**IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

Admiralty No. 39-58

LAUREANO MAYSONET GUZMAN, Libellant,

v.

**M/V "CARIB", her engines, boilers, appliances, tackle,
furniture, etc. and RAMON RUIZ PICHIRILO, Respondents.**

[fol. 2]

LIBEL—Filed December 5, 1958

To the Honorable, the Judges of Said Court:

The libel and complaint of Laureano Maysonet Guzman against the M/V "CARIB", her engines, boilers, appliances, tackle, furniture, etc. and against Ramon Ruiz Pichirilo, owner, operator and/or charterer of the M/V "CARIB", in an action of tort, civil and maritime, alleges on information and belief, as follows:

First: That at all the times hereinafter mentioned, the libellant, Laureano Maysonet Guzman, was and now is a resident and citizen of the Commonwealth of Puerto Rico and the United States of America.

Second: That the M/V "CARIB", is now, or during the pendency of process herein, will be within the District of Puerto Rico and within the jurisdiction of this Honorable Court.

Third: That upon information and belief and at all the times hereinafter mentioned, the respondent, Ramon Ruiz Pichirilo is a citizen and resident of the Dominican Republic.

Fourth: That upon information and belief the respondent, Ramon Ruiz Pichirilo owned the M/V "CARIB".

Fifth: That upon information and belief the respondent, Ramon Ruiz Pichirilo, operated, controlled, and manned the M/V "CARIB".

[fol. 3] Sixth: That upon information and belief the M/V "CARIB" flew the flag of the Dominican Republic.

Seventh: That on or about the 15th day of October, 1957, the M/V "CARIB" was in the port of San Juan, Puerto Rico.

Eighth: That on or about the 15th day of October, 1957, the libellant was in the employ of an independent stevedoring contractor, who had contracted to handle the cargo on the aforesaid M/V "CARIB".

Ninth: That on or about the 15th day of October, 1957, while the libellant was performing his duties on the dock alongside the respondent's vessel, he was caused to be seriously and severely injured when a boom of the vessel broke and struck him.

Tenth: That the respondents were under a duty to furnish the libellant with a safe place to work; a safe and seaworthy vessel appurtenances, appliances and crew; to maintain the vessel, its appurtenances, appliances and crew in a safe and seaworthy condition; to act in a reasonable manner with regard to the safety of the libellant.

Twelfth: That the respondents, their agents, servants, and/or employees were negligent in the following respects among others: in failing to equip the vessel with seaworthy appurtenances and equipment, especially the boom and its fastenings; in failing to inspect the boom and its fastenings; in allowing the boom and its fastenings to become and remain in a worn, defective and broken condition; in failing to replace the boom and its fastenings with proper and safe equipment fit for its intended purpose; in failing to warn the libellant of the dangers to be encountered; in failing to provide the libellant with a safe place to work; and in otherwise failing to exercise due care and caution in the premises.

Thirteenth: That the aforesaid occurrence was caused solely by the fault of the respondents without any fault of the libellant contributing thereto.

[fol. 4] **Fourteenth:** That the libellant came under the care of the State Insurance Fund of Puerto Rico and was given his final award on March 6, 1958.

Fifteenth: That by reason of the foregoing, the libellant sustained serious and severe injuries to his head, arms, legs, body and nervous system, some of which upon information and belief, will be permanent; that he was compelled to expend divers sums of money and incur liability to cure himself of said injuries and to alleviate the pain and suffering; upon information and belief, he will be compelled to make such further expenditures in the future; that the libellant has lost and will lose in the future sums of money which he otherwise would have earned.

Sixteenth: And solely by reason of the aforesaid the libellant was damaged in the sum of One Hundred Thousand (\$100,000.00) Dollars.

Seventeenth: All and singular, the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant prays:

1.—That process *in rem* may issue in due form of law, according to the practice of this Honorable Court in causes of admiralty and maritime jurisdiction, against the said vessel, M/V "CARIB", her engines, boilers, apparel, tackle, furniture, etc., and that all persons having or claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid;

2.—That process *in personam* may issue in due form of law, according to the practice of this Honorable Court in causes of admiralty and maritime jurisdiction, against the respondent Ramon Ruiz Pichirilo, owner, operator and/or charterer of the vessel, M/V "CARIB", and that said respondent may be cited to appear and answer all and singular the matters aforesaid; and in the event that the said

[fol. 5] respondent cannot be found in this District or within this jurisdiction, then all goods, chattels and effects belonging to it within this District or within this jurisdiction, and in particular the vessel, M/V "CARIB" and her engines, boilers, apparel, tackle, furniture, etc. be attached in the amount of One Hundred Thousand (\$100,000.00) Dollars, the sum sued for in this Libel, with interest, costs and disbursements of the libellant; and

3.—That this Honorable Court may be pleased to decree to the libellant his damages with interest and costs, and that the said vessel, M/V "CARIB", her engines, boilers, apparel, tackle, furniture, etc., may be condemned and sold to pay the same, and that the libellant may recover his damages from said respondent; and

4.—That the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

Stanley L. Feldstein, Harvey B. Nachman, Proctors
for Libellant, Maritime Bldg. 305, P. O. Box 2544,
San Juan, Puerto Rico, By: Harvey B. Nachman.

IN UNITED STATES DISTRICT COURT

MOTION—Filed December 23, 1958

To the Hon. Clemente Ruiz Nazario, Judge of the afore-said Court.

Comes now Luis M. Bordas as duly authorized agent of Ramon Ruiz Pichirilo by his undersigned attorneys, and under oath states, pleads and alleges:

1. That he has been duly authorized to appear generally in this cause by Ramon Ruiz Pichirilo.

[fol. 6] 2. That Ramon Ruiz Pichirilo is the owner of the M/V "CARIB", as appears from the vessel registry.

3. That Ramon Ruiz Pichirilo as such owner, hereby appears and claims said vessel and all its appliances, appurtenances, tackle, furniture, etc.

4. That the named owner together with this Motion deposits a bond in the sum of \$20,000.00 said bond to respond for any judgment, together with costs, either in this Court or any Appellate Court, rendered against the said M/V "CARIB" and/or Ramon Ruiz Pichirilo.

5. Said Ramon Ruiz Pichirilo by this general appears [sic] does submit to the jurisdiction of the United States District Court for the District of Puerto Rico.

Wherefore, Respondent respectfully moves that the attachment on said vessel and all its appliances, appurtenances, tackle, furniture, etc., be lifted and the same be delivered to his possession.

San Juan, Puerto Rico, this 22 day of December, 1958.

Isaias Rodriguez Moreno, Elmer Toro Lucchetti.

Served with copy and consented to:

By: Stanley L. Feldstein, One of the Proctors for the Libellant.

So ordered:

Clemente Ruiz Nazario, United States District Judge.

December 23, 1958.

IN UNITED STATES DISTRICT COURT

BOND FOR DISCHARGE OF ATTACHMENT—
Filed December 23, 1958

Know All Men by These Presents, that I, Luis Manuel Bordas, of Santurce, Puerto Rico, as Individual Surety, [fol. 7] is held and, firmly bound unto Laureano Maysonet Guzman, as Libellant, in the penal sum of Twenty Thousand Dollars (\$20,000.00), to which payment well and truly to be made I hereby bind myself, my heirs, executors, and administrators, firmly by these presents.

The condition of this obligation is such that, whereas said Libellant has brought an action against the M/V "CARIB"; her engines, boilers, appliances, tackle, furni-

ture, etc., said action being returnable to the United States District Court for the District of Puerto Rico, on the day of 1958, at demanding One Hundred Thousand Dollars (\$100,000.00), damages, the writ being dated at San Juan, P. R., and signed by Mary Aguayo, as clerk, U. S. District Court and Stanley L. Feldstein and Harvey B. Nachman, as Proctors for Libellant, and by direction of said writ an attachment has been placed upon the M/V "CARIB", her engines, boilers, appliances, tackle, furniture etc.

Now, therefore, if the M/V "CARIB", shall be assessed any judgment that may be recovered against it in such action not exceeding the amount of Twenty Thousand Dollars (\$20,000.00), or in default of such payment, shall pay to the officers having execution issued on such judgment, on demand, the actual value of the interest not exempt from attachment and execution of M/V "CARIB", in said attached property, at the time of such attachment, not exceeding said amount of Twenty Thousand Dollars (\$20,000.00), then this bond shall be void, but otherwise to remain in full force and effect.

Signed and dated at San Juan, Puerto Rico, this 23 day of Dec. 1958.

Luis Manuel Bordas (Individual Surety).

[fol. 8]

IN UNITED STATES DISTRICT COURT

ANSWER—Filed February 9, 1959

To the Hon. Clemente Ruiz Nazario, Judge of the Aforesaid Court:

The answer of respondents to the libel of Laureano Maysonet Guzman, respectfully represents, upon information and belief, as follows:

1.—Respondent Ramon Luis Pichirilo denies the allegations contained in the First Article of the libel.

2.—Admitted.

3.—Admitted.

4.—Admitted.

5.—Respondent Ramon Luis Pichirilo denies the allegations contained in the Fifth Article of the libel, and alleges that at all times hereinafter mentioned the M/V "CARIB" her engines, boilers, appliances, tackles, furniture, etc., had been chartered by Bordas & Co., a firm of San Juan, P.R., and the entire place of work was under the control of said Bordas & Co.

6.—Admitted.

7. Respondent Ramón Luis Pichirilo denies the averments contained in the Seventh Article of the libel and demands proof thereof.

8.—Respondent Ramon Luis Pichirilo denies the allegations and averments contained in the Eighth Article of the libel.

9.—Respondent Ramon Luis Pichirilo denies the averments and allegations of the Ninth Article of the libel. The answering respondents is without knowledge or information sufficient to form a belief either as to the exact facts of the accident or the injuries sustained by libellant. He accordingly demands proofs of the matter alleged in the Ninth Article of the libel.

[fol. 9] 10.—Respondent Ramon Luis Pichirilo denies the averments and allegations contained in the Tenth Article of the libel. He alleges that insofar as the libellant is concerned all duties were complied with and it specifically denies that the place of work was not safe and also denies that the vessel was unseaworthy in general or in with respect to any portion of appliance. The vessel herein involved and all appliances and portions thereof were strong, staunch and seaworthy.

11.—Libel contains no Article under this number.

12.—Respondent Ramon Luis Pichirilo denies all the averments and allegations contained in Article Twelve of the libel and demands proof thereof.

13.—Respondent Ramon Luis Pichirilo denies the allegations of Article Thirteen of the libel and demands proof thereof.

14.—Respondent denies the allegations of the Fourteenth Article of the libel, and demands proof thereof.

15.—Respondent denies the allegations of the Fifteenth article of the libel and demands proof thereof.

16.—Respondent denies the allegations of the Sixteenth Article of the libel and demands proof thereof.

17.—Respondent denies the allegations of the Seventeenth Article of the libel except that he admits that this cause is within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

As a First Complete Defense to the Libel

18.—That if libellant suffered any injuries as alleged in the libel, said injuries were caused in whole or in part by libellant's own negligence and were not caused or contributed to in any manner by any negligence of this respondent.

[fol. 10]

As a Second Complete Defense to the Libel

19.—That the injuries to the libellant, if any, arose out of certain risks, dangers and hazards, all of which were open, obvious and well known to the libellant at and before the said injury and all of said risks, dangers and hazards had been assumed by the libellant.

As a Third Complete Defense to the Libel

20.—That the injuries and disability if any, suffered by libellant must have been already properly compensated if libellant has been already cared for by the State Insurance Fund of Puerto Rico and given his final award therefrom, as alleged in Article Fourteenth of the libel.

As a Fourth Complete Defense to the Libel

21.—That at all times hereinafter mentioned the M/V "CARIB", her engines, boilers, appliances, tackles, furniture, etc., had been chartered by Bordas & Co. a firm of San Juan, Puerto Rico and the entire place of work was under the control of said Bordas & Co.

Wherefore, respondent prays that libel herein be dismissed with costs and for such other and further relief as law and justice may require.

San Juan, P.R., this 5th day of January 1959.

Isaias Rodriguez Moreno, Elmer Toro Lucchetti,
Proctors for Respondents.

[fol. 12]

TRANSCRIPT OF TRIAL

LAUREANO MAYSONET GUZMAN the libellant, appeared as a witness on his own behalf and upon being examined testified as follows:

[fol. 12a] Mr. Rodriguez: I just want to know if the records show that Bordas had State Insurance Fund Compensation?

Mr. Nachman: I concede that. I am not suing Bordas and Company.

[fol. 39] JOSE LORA, a witness called by and on behalf of Libellant, after having been first duly sworn by the Notary Public, was examined and testified as follows:

Direct examination.

Questions by Mr. Nachman:

Q. What is your name?

A. Jose Lora.

Q. What is your occupation?

A. Master of a vessel.

Q. Where do you live?

A. Ciudad Trujillo, Dominican Republic.

[fol. 40] Q. What ship are you the master of?

A. The CARIB.

Q. What flag does the CARIB fly?

A. Dominican.

Q. By whom are you employed?

A. Ramon Ruiz Pichirilo.

Q. Were you master of the CARIB on October 15, 1957?

A. Yes, sir.

Q. Where was the ship on that date, if you remember?

A. At the Isla Grande pier.

Q. In what pier?

A. Here in San Juan, at Isla Grande.

Q. And what was the ship doing at that time at that pier?

A. Unloading.

Q. What were you unloading?

A. Corn.

Q. On that date, did any accident occur on board the ship?

A. Yes, sir.

Q. What happened?

A. Well, we were unloading, and suddenly the boom fell on the side with a sling load of ten bags of corn. This was because the shackle which holds the block opened. It was a new shackle; and when it opened, well the boom fell on the side with a sling load of ten bags of corn.

Q. Did you see this happen?

A. Yes, sir. I am always around because I am the one in charge of dispatching the corn.

Q. And did anyone get hurt as a result of this?

A. Well, yes, there was a fellow there, an employee of Bordas & Compania, who was refilling the bags with the corn that had spilled on deck, and suddenly I saw that the man stayed more or less like this. I don't know. I don't know what touched him. Something touched him but I don't know what it was.

Q. And what happened to him after that?

A. To this gentleman?

Q. Yes.

A. They took him to the clinic.

[fol. 4'] Q. Do you know the name of that man?

A. No, sir, I don't remember his name.

Q. Did you make out an accident report on this?

A. No, sir; of course, I didn't fill out any report. He was not my employee.

Q. Did you report the fact to anyone?

A. Well, of course, Bordas & Compania; they hospitalized him.

Q. Did you fix the shackle after the accident?

A. No, I didn't fix it. It was not fit. I put a new one on. It was not fit for anything else.

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[fol. 49] LUIS MANUEL BORDAS a witness called by and on behalf of the respondent, after having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Rodriguez:

Q. Please state your name?

A. Luis Manuel Bordas.

Q. What is your capacity with Bordas and Company, Inc.? Your relation, I mean?

A. I am Director-Partner of the concern, Bordas and Company, of San Juan, Puerto Rico.

Q. What are the main functions of that concern?

A. We are engaged in the import and export business; loading and unloading vessels sometimes; and shipping.

Q. What else?

A. And shipping.

Q. Among what areas do you conduct your business? Around the Caribbean?

A. Around the Caribbean area.

Q. Do you know Mr. Laureano Maysonet?

A. I saw Laureano Maysonet yesterday in Dr. Murphy's office.

[fol. 50] Q. Before that?

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A. Before that I never had a chance to see him.

Q. You were served two days ago with a subpoena to bring some records with you, in relation to the work performed by Mr. Laureano Maysonet on behalf of your company? Do you have them with you?

A. Well, I brought in a card that is kept for all the casual workers on the piers, in order to keep a record of the hours worked and the Social Security docket. I have brought in that card, and according to those records Mr. Laureano Maysonet Guzman worked in our company in the last part of 1957, from September to October; to be exact, from September 17 to October 15, 1957, the day that he quit the work due to the accident.

Q. In other words, prior to the accident, Mr. Maysonet only worked for your company for two months?

A. No, he worked for only one month, as an occasional worker.

Q. He had never worked before, with Bordas and Company?

A. He has never been a permanent worker, and he never worked before that date, that the record shows.

Q. And he was being paid, as it shows, \$1.00 an hour?

A. His work on those days was coopering cargo, sewing broken bags, and he was paid \$1.00 an hour, that's all.

The Court: That's Identification 3 for respondent. Have it marked.

(Record of libellant's work was marked Identification 3 for Respondent.)

Q. What is this I am showing you?

A. This is a record that is kept for all the occasional workers on the piers, stating the Social Security number.

Q. Which is what number for Mr. Laureano Maysonet?

A. Laureano Maysonet, his Social Security number is 582-40-8162 1957. And here is kept the number of hours, the amount that is deducted for the Social Security for [fol. 51] account of the employer, the total number of hours, and that's all.

Q. Now, do you know Mr. Ruiz Pichirilo?

A. Yes.

Q. Will you please state your connection with Ruiz Pichirile in this case?

A. He has been a business relation of ours for many years. We have been managing and operating the "CARIB" for around five years. He lives in the Dominican Republic.

Q. He lives in the Dominican Republic?

A. He is from the Dominican Republic and lives there. He has not been able to get out of the country for the last two years.

The Court: Why?

A. I would rather not say.

The Court: I am interested in knowing, if you know?

A. It would be for political reasons.

The Court: But still he owns this boat?

A. But he is not allowed to leave the country.

The Court: The boat leaves the Dominican Republic to come to Puerto Rico, but he can not travel?

A. But he can not travel, and his captain's papers were cancelled.

Q. What arrangement do you have with him for operating this boat?

A. Well, I am paying him \$200.00 a month.

Q. For what?

A. And I take care of all the expenses, insurance, payrolls, etc., of the boat.

Q. When you say you take care of all the expenses, what do you mean by that?

A. I mean paying the payrolls, the captain's salary, all the payrolls of the vessel, the food of the crew, the fuel, the maintenance, the repair, the dry docking, the insurance, the port charges, and all the expenses that go with the operation of a vessel.

Q. Mr. Pichirile does not pay one cent toward those expenses?

A. He does not pay one cent.

[fol. 52] Q. And you pay Mr. Pichirilo that \$200.00 a month for the chartering of this boat?

A. I pay \$200.00 a month.

Q. For the chartering?

A. For the open boat charter.

Q. And you have exclusive control of everything, as to the boat?

The Court: Mr. Rodriguez Moreno you were complaining of leading questions. I believe you have not asked this witness a single question that wasn't leading, and it is the duty of the Court to see that the proper procedure is followed here.

Mr. Rodriguez: I am sorry.

The Court: It is worse for your case, because I can not give any credit to a witness answering leading questions because the attorney is the one that is testifying.

Mr. Rodriguez: I am sorry, Your Honor.

The Court: You have been insisting. This witness never mentioned anything about chartering the vessel, and you insisted on chartering, chartering—and then he had to say chartering.

Mr. Rodriguez: I was trying to get the terms commonly used.

The Court: No, he may be simply an agent for Pichirilo because he is in that situation that he can not leave the Dominican Republic, and they are good friends, and he says as a favor to Pichirilo we will do this and that; and another thing is a charter party, a contractual relation of a different nature.

Mr. Rodriguez: That's exactly what I asked, that he says he pays the crew, maintenance, etc. I am sorry if the question is leading. It isn't my intention to ask leading questions.

The Court: It may not be your intention, but you are doing it.

Q. How much did you state you pay a month to Mr. Ruiz Pichirilo?

A. \$200.00 a month.

[fol. 53] Q. How do you pay? What sort of payment do you make, for the expenses that you have in the operation of this boat?

A. I pay the crew, the master makes up the payroll of the crew, every 15 days, and we draw a check in the name of the master. Then the master pays the seamen. We also give him the money for the rations or the feeding of the men. Also the operating expenses of the vessel are paid by us. That chartering is different. Let me explain what a charter party is.

The Court: You may go ahead.

A. When a vessel is chartered, usually the owner of the vessel has to supply a vessel with insurance, with crew, with galley and food and everything. The only thing that the charterer pays is port charges and fuel for the intended voyages. That's the usual charter party. There are standard forms for that. But in this case it is a kind of charter, because it does not comply with the regular provisions of a charter party. I pay the seamen, food, repair, maintenance, drydocking; which in a regular charter party are excluded.

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Cross examination.

By Mr. Nachman:

XQ. Mr. Bordas, Captain Lora isn't your employee, is he?

A. Captain Lora was appointed by Ramon Ruiz Pichirilo, but he is under my orders and under my payroll. I pay him.

XQ. Do you pay him here, in San Juan?

A. Wherever he is. If he is here, I pay him. If he is in another port, I mail him or cable him the money.

XQ. In what currency do you pay him?

A. Sometimes in Colombian currency. Whatever currency of the port he is in.

[fol. 54] XQ. When the vessel is in San Juan, in what currency do you pay him?

A. In United States currency.

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XQ. Mr. Bordas, is Mr. Lora covered by the Fondo del Seguro del Estado?

A. He is not.

XQ. When this ship comes into San Juan, and registers with the Customs, who is listed as owner of the vessel?

A. Ramon Ruiz Pichirilo is listed as owner.

XQ. What flag does the vessel fly?

A. The Dominican Flag.

Mr. Rodriguez: Those things, Your Honor, were admitted in our answer.

XQ. You were present when Joseph Lora testified under oath in my office?

A. I was.

XQ. And you sat through the entire deposition?

A. I did.

XQ. Did you hear this question asked to Mr. Joseph Lora, "By whom are you employed"? And did you hear this answer, "Ramon Ruiz Pichirilo."

A. That's right.

XQ. This crew, does it sign articles aboard that ship?

A. No, they have to abide by the regulations of the Dominican Government, and according to those regulations the Captain of the vessel has to be appointed by a Dominican owner. It is a matter of technicality. Captain Lora can never say he is my employee, because he is flying under the Dominican flag on a Dominican schooner.

XQ. You are nowhere listed as owner of this vessel?

A. I am not.

Mr. Nachman: No further questions.

Mr. Rodriguez: No questions, Your Honor.

The Court: Is it true or not, Mr. Bordas, that the true owner of this steamship "CARIB" is Bordas and Company?

A. No, sir.

The Court: You say that under oath, that Bordas and Company is not the owner of the Steamship "CARIB"?

{fol. 55] A. No. We are controlling, operating and managing the vessel.

The Court: That's all.

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(Work record of libellant was admitted in evidence by stipulation and marked Exhibit 3 for Respondent.)

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COLLOQUY

Mr. Rodriguez: All right. That is all, Your Honor.

The Court: Then the respondent rests?

Mr. Rodriguez: Yes, Your Honor. Your Honor, we would like to file a legal memorandum, now that the case is finished, in this case based on the fact that Ramon Ruiz Pichirilo not having control of this boat is not liable in this case. We would like to, in other words—the question is whether Mr. Pichirilo had control of this boat, independently of Mr. Bordas' activities, and as to that fact we would like Your Honor to grant us 15 days to file this memorandum.

The Court: Of course, you know pretty well the doctrine in Admiralty that there is a non-delegable duty, no matter who was managing this thing, or who was paying for the payroll and expenses and everything. Mr. Bordas clearly stated that the boat belongs to Pichirilo, and if Pichirilo isn't coming here it is because he can not leave the Dominican Republic, but he is the owner, the operator of the boat.

Mr. Rodriguez: No, the owner, not the operator. The operator is Bordas and Company.

The Court: That may be what you think, but I don't believe that Bordas is the operator of the boat.

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[fol. 56]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

OPINION AND ORDER—Filed and Entered September 8, 1959

This action is now before the court after a trial on the merits.

I have given due consideration to the pleadings, the evidence adduced at the trial and the memoranda filed by the parties and find myself fully advised in the premises.

Libelant's evidence as to the happening of the occurrence was not in any way controverted by respondents, and it thus appears, from said controverted [sic] evidence,

(a) That about 3:15 P.M. on October 15, 1957 libelant Laureano Maysonet Guzman was aboard the M/V CARIB, sewing sacks, that suddenly the boom fell and struck him and he lost consciousness.

(b) That the shackle broke on the boom, causing the same to fall, strike a truck, bouncing off and hitting the libelant on the head.

The libelant was lawfully aboard the vessel, at the time of the accident as an employee of Bordas & Co. stevedoring contractor in charge of the unloading operations of the vessel.

The accident caused serious injuries to libelant. He was unconscious for a long period of time and was hospitalized from October 17 to November 22, 1957. He sustained a separation of the coronal suture of the skull; a fracture of the temporal bone, a fracture of the frontal bone, the bleeding from the nose being an indication of a fracture into the base of the skull. The force of the blow and the extent of the fractures caused a severe concussion to the brain, which has resulted in a post-concussion syndrome as manifested by the constant throbbing headaches, dizziness, tenderness and spasm of the cervical musculature.

On account of his youth (libelant is only 26 years old), this injury to the brain has caused and is likely to cause further irreparable damage to the libelant's psychological [fol. 57] adjustment to his injury, because of the emotional difficulty that a young man faces in not being able to provide a livelihood for his family.

Conservatively speaking, the damages suffered by this libelant are worth \$30,000.00.

I have not the slightest doubt that the evidence has fully established that M/V CARIB was unseaworthy at the time of the occurrence.

See: *Crumady v. The J. H. Fisser*, 358 U. S. 423.

Respondents sole defense is that the owner of the vessel, defendant Ramon Ruiz Pichirilo had chartered the M/V

CARIB by a demise charter to Bordas & Co., that the latter had possession, command and navigation of the ship and was *pro haec vice* the owner of the vessel and, therefore, the liability for unseaworthiness of the vessel rests on Bordas & Co. and not on defendant Ruiz Pichirilo, citing in support of its said contention *Vitozi v. Balboa Shipping Co.*, 163 F. 2d (1 Cir.) 286.

But in *Vitozi*, supra, the defendant, produced a "copy of the demise charter party of the ship", which it was conceded was a true demise charter party under the rule laid down in *Reed v. United States*, 11 Wall. 591, 601, 20 L. Ed. 220. (See Footnote 1, at p. 287, 163 F. 2d.).

No such document or any other has been produced here by the defendant and all that appears from the evidence adduced at the trial, in connection with this defense, is the testimony of Mr. Luis Manuel Bordas, Director and Partner of Bordas & Co., who admitted that there was no charter, and that his company's relation with the vessel was "something like a charter but not a charter."

The Captain testified that he was not working for Bordas & Co. but for the owner Ramon Ruiz Pichirilo.

The evidence is so meagre in this respect that I can find no lawful basis for holding that the vessel was under a demise charter party to Bordas & Co.

[fol. 58] A decree for the libelant will be entered, awarding him damages in the amount of \$30,000.00, plus costs.

Proctor for libelant is directed to submit, within a period of 15 days from the date of notice of this order, proposed findings of fact, conclusions of law and a form of decree, serving copy thereof to proctors for respondents, who shall have a like period to submit objections thereto.

It is so Ordered.

San Juan, Puerto Rico, September 8, 1959.

Clemente Ruiz-Nazario, United States District Judge.

IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT—Filed and Entered October 16, 1959

1. Libellant has been at all times a resident and citizen of the Commonwealth of Puerto Rico.

2. The respondent, Ramon Ruiz Pichirilo was at all times mentioned in the libel a resident and citizen of the Dominican Republic.

3. The respondent Ramon Ruiz Pichirilo was at all times mentioned in the libel the owner in possession and control of the vessel M/V "CARIB".

4. On October 15, 1957 libellant Laureano Maysonet Guzman was employed aboard respondent's vessel as a longshoreman by Bordas & Co., stevedoring contractors.

5. At about 3:15 P. M. on said date, while he was sewing sacks aboard the M/V "CARIB" the boom fell and struck the libellant.

6. The boom fell because the shackle on the boom broke. The shackle and boom were not fit for their intended purposes.

7. The vessel was for the foregoing reasons unseaworthy.

[fol. 59] 8. As a result of the accident the libellant was rendered unconscious for a long period of time. He was hospitalized from October 17 to November 22, 1957. He sustained a separation of the coronal suture of the skull; a fracture of the temporal bone; a fracture of the frontal bone; he also bled from the nose which indicated a fracture into the base of the skull. The force of the blow and the extent of the fractures caused a severe concussion of the brain, which has resulted in a post concussion syndrome manifested by constant throbbing headaches, dizziness, tenderness and spasm of the cervical musculature.

9. The libellant has not been able to resume his former occupation or other common labor. He is unschooled and untrained for other work.

10. On account of his youth (26 years of age), this injury to the brain has caused and is likely to cause further irreparable damage to libellant's psychological adjustment to his injury, because of the emotional difficulty that a young man faces in not being able to provide a livelihood for his family.

11. I find that the libellant was not in any way guilty of negligence which contributed to the happening of the accident.

12. For his permanent disability, his pain, suffering and mental anguish both past and future and his loss of past and prospective earnings, I find that an award of \$30,000.- is reasonable compensation.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter herein.

2. The vessel M/V "CARIB" was unseaworthy at the time of the accident because the shackle and boom of said vessel were unfit for their intended purposes.

[fol. 60] 3. The libellant was not contributorily negligent.

4. A decree should be entered in favor of the libellant and against the respondents in the sum of \$30,000.00.

DECREE

The above entitled action came on for trial on April 15, 1959. The libellant appeared in person and by his proctors Stanley L. Feldstein and Harvey B. Nachman of San Juan, Puerto Rico and the respondents M/V "CARIB" and Ramon Ruiz Pichirilo appeared by Isaias Rodriguez Moreno and Elmer Toro Luchetti of San Juan, Puerto Rico and testimony having been offered and briefs having been filed and the Court having filed an Opinion and Order and Findings of Fact and Conclusions of Law in accordance with Admiralty Rule 46 $\frac{1}{2}$, now pursuant thereto, it is hereby ordered, adjudged and decreed that the libellant herein, Laureano Maysonet Guzman, have and recover from the

respondents herein, M/V "CARIB" and Ramon Ruiz Pichirilo, the sum of \$30,000.00, together with interests, costs and disbursements to be hereinafter taxed on notice.

San Juan, Puerto Rico, October 16, 1959.

Clemente Ruiz-Nazario, United States District Judge.

[fol. 63]

IN UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
No. 5650

RAMON RUIZ PICHIRILO, Respondent, Appellant,

v.

LAUREANO MAYSONET GUZMAN, Libellant, Appellee.

Appeal From the United States District Court for the District of Puerto Rico.

Before Woodbury, Chief Judge, and Maris* and Aldrich, Circuit Judges.

Seymour P. Edgerton, with whom Isaias Rodriguez Moreno, Hiller B. Zobel, W. C. Moffett and Bingham, Dana & Gould were on brief, for appellant.

Harvey B. Nachman, with whom Stanley L. Feldstein and Golenbock, Nachman & Feldstein were on brief, for appellee.

OPINION OF THE COURT—May 29, 1961

ALDRICH, *Circuit Judge*. This is a libel in rem against the M/V Caribe and in personam against her owner (here-

* Sitting by designation.

inafter respondent) for personal injury sustained by libellant, a longshoreman employed by Bordas & Co., a stevedoring concern engaged in discharging the vessel in the port of San Juan, Puerto Rico. The sole claim is for unseaworthiness, the injury having been caused by an admittedly defective shackle, recently bought. The defense was that the vessel was under demise charter to Bordas. [fol. 64] The court ruled that the evidence showed no such charter.¹ This ruling was wrong. A demise charter may be, as this one was claimed to be, by parole. *James v. Brophy*, 1 Cir., 1895, 71 Fed. 310, 312. We do not gather the court thought otherwise. We believe the court was misled by testimony of Bordas' representative that the arrangement was not the usual charter party (although he added that "it is a kind of a charter").² The witness, a layman, was not qualified to draw legal conclusions. Moreover, his reservations appear to have been that it was neither a time charter, nor a bare boat charter, rather than that there was no charter at all. A demise, of course, is not a time charter, and it need not be of a bare boat. *United States v. Shea*, 1894, 152 U.S. 178.

The evidence showed that respondent, permanently residing within the Dominican Republic, had had no connection with the operation of the Caribe for some five years, except that he had appointed, or "employed," the master. That action would not mean a control of the vessel so as to prevent a demise. See *United States v. Shea*, *supra*; *Grilleg v. United States*, 2 Cir., 1956, 229 F.2d 687, 689-90; *The Willie*, 2 Cir., 1916, 231 Fed. 865. Bordas' representa-

¹ We are satisfied on the record that with characteristic forthrightness the court did not seek to avoid the necessity of ruling by making a finding that it did not believe testimony which in fact it did believe. Under these circumstances, and since, in addition, this evidence was inherently credible and undisputed, we will accept it without the necessity of remand. See *Union Leader Corp. v. Newspapers of New England, Inc.*, 1 Cir., 1960, 284 F.2d 582, 587, cert. den., 365 U.S. 833; *Texas Co. v. R. O'Brien & Co.*, 1 Cir., 1957, 242 F.2d 526, 529.

² Actually, the court inaccurately quoted the witness as having said, "something like a charter, but not a charter."

tive testified, without contradiction, that the master was under Bordas' orders. Bordas paid the master, the crew, and all expenses of the vessel, and paid respondent a flat monthly sum. The suggestion that it was merely an agent for respondent is without merit. Libellant offers no explanation why an agent should be making fixed monthly payments to a principal, rather than the reverse. We hold the evidence indisputably shows that Bordas was operating the ship as a demisee. *Reed v. United States*, 1870, 78 U.S. (11 Wall.) 591, 601 ("possession, command, and navigation").

In *Vitozi v. Balboa Shipping Co.*, 1 Cir., 1947, 163 F.2d 286, we held that an owner who has surrendered all control by demise was not liable in personam for unseaworthiness. Possibly we erred in extending this rule indiscriminately to cases where the unseaworthy condition preceded the demise. See *Cannella v. Lykes Bros. S.S. Co.*, 2 Cir., 1949, 174 F.2d 794, 795, cert. den., 338 U.S. 859. But we see no reason to reconsider when, as here, the defective condition arose only after the owner had parted with all possession. See *Grillea v. United States*, supra, at 689, 690. The judgment in personam against respondent must be set aside.

Respondent, as claimant to the vessel, also asks us to dismiss the libel in rem. Since Bordas' obligations under the Puerto Rico Workmen's Compensation Act represent its exclusive liability to its employees, 11 L.P.R.A. ch. 1, §21, an obligation obviously not here involved, and since the owner of the vessel is not personally liable at all, respondent contends that the vessel should not be independently charged. We agree.

It is generally accepted that the in rem action in admiralty and the maritime lien are correlative. "Where one exists, the other can be taken, and not otherwise." *The Rock Island Bridge*, 1867, 73 U.S. (6 Wall.) 213, 215; see *The Resolute*, 1897, 168 U.S. 437, 440; *The Lottawanna*, 1874, 88 U.S. (21 Wall.) 558, 581; 1 Benedict, Admiralty 18 (6 ed. Knauth 1940); Gilmore & Black, Admiralty 510 (1957); Price, Maritime Liens 12 (1940); Robinson, Admiralty 362 (1939). This does not solve our problem, because we could hold that a lien had arisen from a claim against the ship

[fol. 66] notwithstanding the absence of a claim against any distinct juridical person, but it does focus attention on the necessity of an underlying claim. The concept of a ship as an individual may have an aura of romance befitting the lore of the sea, but to regard it as an entity having separate responsibilities independent of the primary legal responsibility of some human actor has little rational appeal. This is not to say that the "personification" of the vessel is not a convenient shorthand method of expressing legal results. See Price, *Maritime Liens* 16 (1940); Hebert, "The Origin and Nature of Maritime Liens," 1930, 4 *Tul. L. Rev.* 381, 392. It is something else to use the characterization to achieve them.

In a variety of situations courts have refused to charge the ship when neither the owner nor the party in possession, nor the agents of either, were personally liable. In *Queen of the Pacific*, 1901, 180 U.S. 49, it was argued that a stipulation in a bill of lading requiring all claims against a shipowner to be brought within a certain time did not prevent an in rem action against the vessel after that time. The court rejected this, saying, "The 'claim' is in either case against the company, though the *suit* may be against its property." 180 U.S. at 53. (Ital. in orig.) In *The Oceanica*, 2 Cir., 1909, 170 Fed. 893, 898, *cert. den.*, 215 U.S. 599, it was alleged that a tug had negligently caused the loss of her tow. The towage contract exempted the tug owner from negligence.³ The Court refused to charge the tug. That this was not simply a question of contractual interpretation is made clear by *The Elizabeth M. Miller*, D.C.W.D.N.Y., 1932, 3 F.Supp. 171, 172-73, where the tug was operated by an allegedly exempted demisee. *The Western Maid*, 1922, 257 U.S. 419, involved several collisions in which vessels owned outright or *pro hac vice* by [fol. 67] the United States were assumed to be at fault. Sovereign immunity at that time prevented suits against the government. The court refused to hold that a lien had attached which was enforceable when the ship passed into private hands. More recently, in *Noel v. Isbrandtsen Co.*, 4 Cir., 1961, 287 F.2d 783, in rem liability was not estab-

³ But see *Bisso v. Inland Waterways Corp.*, 1955, 349 U.S. 85.

lished because of the failure to show any personal obligation owed to the libellant to furnish a seaworthy ship.

There is nothing in the doctrine of unseaworthiness that should lead to a different result. It is true that one speaks of unseaworthiness "of the vessel" and of "liability without fault," but this cannot obscure the fact that liability depends upon a legal obligation growing out of a relationship between individuals: the injured party and the one charged with preventing the injury.* See *United New York and New Jersey Sandy Hook Pilot Association v. Halecki*, 1959, 358 U.S. 613, 616; *Seas Shipping Co. v. Sieracki*, 1946, 328 U.S. 85, 95-96; *id.* at 104 (dissenting opinion); *Mahnich v. Southern Steamship Co.*, 1944, 321 U.S. 96, 100, 103-04; *The Osceola*, 1903, 189 U.S. 158, 171, 175; *cf. Grillea v. United States*, *supra*, at 690. A ship does not make a warranty. Whether one speaks in terms of holding out, *cf. West v. United States*, 1959, 361 U.S. 118, 122, or duty owed, *Halecki*, *supra*, unseaworthiness liability requires something more than a mere defective condition of the vessel. See *Noel v. Isbrandtsen Co.*, *supra*.

In *Smith v. The Mormacdale*, 3 Cir., 1952, 198 F.2d 849, *cert. den.*, 345 U.S. 908, a longshoreman who was limited in his rights against his employer by the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§901-50, [fol. 68] was held unable to proceed against the vessel which was owned by his employer, although the vessel's unseaworthy condition was alleged. Following the teaching of the cases earlier discussed, we are not prepared to reach a different conclusion simply because title to the vessel is in the hands of another party who is also not personally liable. *Cf. Pedersen v. Bulkhub*, D.C.E.D.N.Y., 1959, 170 F.Supp. 462, 466-67, *affirmed*, 274 F.2d 824, *cert. den.*, 364 U.S. 814; *Vitozi v. Platano*, D.C.S.D.N.Y., 1948, 1950 A.M.C. 1686; *The Elizabeth M. Miller*, D.C.W.D.N.Y., 1932, 3 F. Supp. 171, 172-73 (dictum). But see *Leotta v. The S.S. Esparta*,

* Liability without fault in analogous situations has not led courts to describe the result as other than an adjustment of loss between the parties involved. See, e.g., *Erner v. Sherman Power Constr. Co.*, 2 Cir., 1931, 54 F.2d 510, 512-14. See generally, *Prosser, Torts* 317-18 (2d ed. 1955).

D.C.S.D.N.Y., 1960, 188 F. Supp. 168, 169, *infra*; *Reed v. The Yaka*, D.C. E.D. Pa., 1960, 183 F. Supp. 69, *infra*. Nor, by some process of inverse reasoning, does this lead us to say that a demisor is personally liable for a condition of unseaworthiness created by the demisee. It should be enough that his ship is subject to a lien to secure whatever obligation the demisee has personally incurred in his operation of the ship. See *The Barnstable*, 1901, 181 U.S. 464.

It is true that in *Grillea v. United States*, 2 Cir., 1956, 232 F.2d 919 (2-1), the court reached the opposite result. It did so without discussion, and with only the simple statement, "we see no reason why a person's property should never be liable unless he or someone else is liable 'in personam.'" 232 F.2d at 924. With all deference we think so novel a principle needs more support than a statement that the court sees no reason against it. *Grillea* seems the more surprising in that Judge Hand, the writer of the majority opinion, had observed not long before, after discussing the ancient doctrine of deodand, "Disputes arise between human beings, not inanimate things; . . . a vessel . . . is, and can be, nothing but the measure of [claimant's] stake in the controversy." *Buras Bros. v. The Central R.R. of New Jersey*, 2 Cir., 1953, 202 F.2d 919, 913.

[fol. 69] *Grillea* has resulted in some discussion of the effect of an indemnity clause in the demise. *Leotta v. The S.S. Esparta*, D.C.S.D.N.Y., 1960, 188 F. Supp. 168. See also *Reed v. The Yaka*, D.C.E.D. Pa., 1960, 183 F. Supp. 69. We would agree with *Yaka* that the existence of an indemnity clause is beside the point. But we cannot agree with *Yaka* that the fact that the demising owner is eventually going to get the boat back is determinative. This was answered by *The Western Maid*, *supra*. Cf. *Pedersen v. Bulklube*, *supra*.

We do not reach respondent's other contentions, one of which appears to have some merit.

Judgment will be entered vacating the judgment of the District Court and remanding the action for entry of a judgment of dismissal.

IN UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

JUDGMENT—May 29, 1961

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel.

Upon consideration whereof, It is now here ordered adjudged and decreed as follows: The judgment of the [fol. 70] District Court is vacated and the cause is remanded to that Court for the entry of a judgment of dismissal.

By the Court: Roger A. Stinchfield, Clerk, By:
Dana H. Gallup, Chief Deputy Clerk.

Approved: Peter Woodbury, Ch. J.

Thereafter, on June 29, 1961, mandate issued and the original papers were returned to the District Court.

[fol. 71] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 72]

SUPREME COURT OF THE UNITED STATES

No. 358, October Term, 1961

LAUREANO MAYSONET GUZMAN, Petitioner,

vs.

RAMON RUIZ PICHIRILO.

ORDER ALLOWING CERTIORARI—November 6, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.